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THESIS

**ENHANCING PREPAREDNESS ADOPTION AND
COMPLIANCE IN THE FEDERAL LAW
ENFORCEMENT COMMUNITY THROUGH
FINANCIAL INCENTIVES**

by

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FEDERAL LAW ENFORCEMENT COMMUNITY THROUGH FINANCIAL
INCENTIVES**

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ABSTRACT

Since the 9/11 terrorist attacks and Hurricane Katrina, the federal law enforcement community has not adopted the level of emergency preparedness recommended or instructed by national directives, studies, and after-action reports. The importance of preparedness has been identified in numerous studies regarding the need for coordinated efforts on federal, state, local, and tribal levels. Failure to prepare and train employees has resulted in tort claims against local agencies and potential increased legal liability for the federal government.

Through an analysis of specific costs and benefits of preparedness adoption and compliance, this thesis concludes that measurable and anticipated benefits often exceed costs for agencies. Analysis reveals that financial incentives, through the many federal preparedness grant programs, have encouraged preparedness adoption and compliance by state, local, and tribal governments. However, the federal law enforcement community, without access to these grants, has not achieved a level of preparedness adoption and compliance, raising the question: Would a new financial incentive concept designated for the federal law enforcement community increase preparedness adoption and compliance?

Research indicates that a novel federal financial incentive concept would in fact increase preparedness adoption and compliance within the federal law enforcement community consistent with its state, local, and tribal partners.

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LIST OF ACRONYMS AND ABBREVIATIONS

CRS	Congressional Research Service
FEMA	Federal Emergency Management Agency
DHS	Department of Homeland Security
DOE	Department of Energy
GAO	Government Accountability Office (General Accounting Office)
GPD	FEMA Grant Program Directorate
GPRA	Government Performance and Results Act of 1993
HHS	Department of Health and Human Services
HSC	Homeland Security Council
HSEEP	Homeland Security Exercise and Evaluation Program
HSGP	Homeland Security Grant Program
HSPD	Homeland Security Presidential Directive
ICS	Incident Command System
IMSI	Incident Management Systems Integration
NEP	National Exercise Program
NIC	National Integration Center
NIMS	National Incident Management System
NIMSCAST	NIMS Compliance Assistance Support Tool
NRP	National Response Plan
NRF	National Response Framework
OHS	Office of Homeland Security
SAA	State Administrative Agency

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I. INTRODUCTION

A. PROBLEM STATEMENT

The federal law enforcement community has not adopted a level of emergency preparedness, as recommended or instructed by numerous national directives, plans, policies, studies and after-action reports, in order to prepare our nation to respond to future man-made attacks and natural disasters. The importance of preparedness for man-made and natural disasters has been identified in numerous documents and studies examining the response to the 9/11 terrorist attacks, Hurricane Katrina, and other significant incidents requiring coordinated efforts by numerous agencies on the federal, state, local, and tribal levels. The failure to prepare and train responding employees has resulted in the imposition of legal liability against local governments and potential liability for the federal government.

The level of federal law enforcement preparedness adoption and training compliance has been sporadic and quite often at a lower level than that of state, local, and tribal agencies. According to the Department of Homeland Security (DHS) Federal Emergency Management Agency (FEMA), no federal department or agency has formally reported its preparedness adoption and compliance to FEMA.

The importance of preparedness adoption and compliance for the federal law enforcement community can be debated by responders and policy makers since emergency response is not the primary responsibility of many of the federal law enforcement departments and agencies. However, those federal departments and agencies need to be prepared to respond to the incidents under their jurisdiction and must plan to support other federal, state, local, and tribal agencies during significant incidents when existing resources are overwhelmed. If the federal law enforcement community does not expect to respond to another significant national incident in the future, it has not adequately studied the past or properly anticipated the future.

If preparedness is encouraged, or mandated as an important segment of homeland security by the federal government, ought the federal government adhere to its own requirements and recommendations as part of the national strategy? Has the federal government adhered to its own preparedness requirements? If not, what would encourage an enhanced culture of preparedness within the federal law enforcement community, and would financial incentives and benefits increase adoption and compliance?

B. RESEARCH QUESTION

State and local governments have achieved preparedness compliance largely due to financial incentives from the federally administered Homeland Security Grant Program and other federal funding sources. State and local governments have also been the subject of tort claims and other legal actions for failure to train their personnel or prepare them for their duties; such litigation has encouraged state and local governments to enhance training and preparedness. Since the federal government has not achieved a similar level of preparedness adoption and compliance, would a new financial incentive concept encourage and enable the federal law enforcement community to increase its preparedness compliance? If so, how would such a program work? What are the anticipated costs and benefits?

C. LITERATURE REVIEW

The importance of preparedness adoption and compliance has been addressed in numerous national directives, plans, policies, studies, and after-action reports. From empowering documents to after-action reports, the benefits of national preparedness have been discussed, studied, and analyzed by the public and private sectors.

1. Empowering Documents

In addition to the perceived and demonstrated value of preparedness in a post-9/11 world, as identified in many incident after-action reports, the primary reason for preparedness adoption and compliance is the direction and guidance provided in several important empowering and directing homeland security documents. Homeland Security

Presidential Directive (HSPD)-5, “Management of Domestic Incidents,” established the foundation for the National Incident Management System (NIMS) and the National Response Plan (NRP) for federal, state, local, and tribal preparedness and incident management (White House, 2003a). HSPD-5 directed federal departments and agencies to adopt and use NIMS for emergency prevention, preparedness, response, and recovery. HSPD-5 also directed federal departments and agencies to participate in the NRP (White House, 2003a, Goal 18). HSPD-5 directed the head of each federal department and agency to revise its plans in accordance with the NRP by June 1, 2003, and to submit a plan to adopt and implement NIMS by August 1, 2003 (White House, 2003a, Goal 19).

HSPD-8, “National Preparedness,” functions as a companion to HSPD-5 to describe how the federal departments and agencies shall prepare to respond to an incident through the establishment of national preparedness goals (White House, 2003b, Goals 3 and 5). Department and agency heads are directed to undertake actions to support the federal preparedness goals (White House, 2003b, Goal 20).

The “National Strategy for Homeland Security” (White House, Office of Homeland Security [OHS], 2002, p. x) addressed emergency preparedness and response through federal, state, and local coordination through 12 initiatives. The “National Strategy for Homeland Security” (White House, Homeland Security Council [HSC], 2007) expanded the strategy to a larger all-hazards approach for federal, state, local, and tribal preparedness and response in coordination with the National Response Framework (NRF) as the replacement for the NRP. The 2007 National Strategy for Homeland Security provided guidance for the role of the federal government as a larger, but more focused role for support (White House HSC, 2007, pp. 33–36). The culture of preparedness is addressed through four principles for adoption by the public and private sector (White House HSC, 2007, pp. 41–42). The importance of NIMS is further discussed in the 2007 strategy through the Incident Command System (ICS) (White House HSC, 2007 pp. 46–48).

The first “DHS Quadrennial Homeland Security Review Report: A Strategic Framework for Homeland Security” (United States Department of Homeland Security [USDHS], 2010b, pp. 71–74) identified maturing and strengthening the homeland

security enterprise through many relevant objectives such as building a homeland security professional discipline; institutionalizing homeland security planning; further enhancing the military-homeland security relationship; strengthening the ability of federal departments and agencies to support homeland security missions and maturing DHS.

2. Hurricane Katrina After-Action Reports

National preparedness became a national priority and focus after the 9/11 attacks. However, national preparedness for a major incident was not significantly challenged again until Hurricane Katrina in 2005. The federal government's level of preparedness and its subsequent failures were discussed in several federal Hurricane Katrina after-action reports.

The White House report, "The Federal Response to Hurricane Katrina – Lessons Learned" (White House, 2006) focused on preparedness throughout the document, focusing on the requirements and importance of NRP and NIMS. The White House report pointed out that all federal departments and agencies should have NIMS-compliant operational command and control structures to strengthen federal capabilities (White House, 2006, p. 72). The second recommendation in the White House report stated, "DHS should institute a formal training program on the NIMS and NRP for all department and agency personnel with incident management responsibilities" (White House, 2006, p. 89).

The United States Senate report "Hurricane Katrina: A Nation Still Unprepared" dedicated Chapter 12 and other areas to the failure of the federal agencies to be prepared for the response and the ramifications in relationship to the NRP (United States Senate, 2006, pp. 163–189). The United States House report "A Failure of Initiative" also focused on the level of federal law enforcement preparedness and response in conjunction with NRP and NIMS (United States House of Representatives, 2006). Both Congressional reports addressed the implications of a failure to prepare for the hurricane and did not exempt the federal law enforcement community from preparedness adherence and compliance.

The White House and Congressional after-action reports addressed many issues, including the importance of preparedness for incident response, but Congress did not provide subsequent political influence or legislation to encourage preparedness adoption and compliance by the federal departments and agencies. In his November 2005 query of the Library of Congress database, Thomas A. Birkland found that the word “Katrina” was located in 293 legislative items, with 48 percent of those entries containing the term “Hurricane Katrina” in the title of the bill. However, Birkland found that the word “preparedness” appeared in only three of the almost-300 Congressional bills (2006, p. 178). Preparedness remains an area for improved focus within the executive and legislative branches.

The lessons learned regarding preparedness from Hurricane Katrina were not limited to the after-action reports from the executive and legislative branches. Donald Kettl identified the importance of preparedness and lessons learned when analyzing the impact of Hurricane Katrina:

Following September 11, 2001, public officials everywhere promised that the nation would learn the painful lessons the terrorists taught. But Hurricane Katrina not only revealed that we have failed to learn, it also showed that we have yet to build the capacity to deal with costly, wicked problems that leave little time to react. (2006, p. 273)

But yet again, Katrina taught a fundamental lesson of homeland security. Just as was the case on September 11, all homeland security events start as local events. The federal response will fail again if it is not part of an integrated national—federal, state and local—plan. (2006, p. 283)

If these lessons are not learned by all levels of government, especially the federal government, there is a great likelihood that we will repeat the errors and failures again and again. As pointed out by Kettl, we must build the capacity.

3. NIMS Compliance

In September of 2004, DHS issued a letter to the federal departments and agencies explaining the requirements of HSPD-5 and NIMS. The Fiscal Year (FY) 2005 letter, as posted on the FEMA NIMS Web site, stated that all federal departments and agencies

were required to adopt NIMS and use it in their individual domestic-incident management and emergency prevention, preparedness, response, recovery, and mitigation activities, as well as in support of all actions taken to assist state or local entities (USDHS, 2004). By December 31, 2004, each department and agency was to submit a plan for the adoption and implementation of NIMS.

The FEMA NIMS Integration Center, now known as the National Integration Center (NIC), has been encouraging NIMS compliance since 2005; it initiated the tracking of state, local, and tribal compliance in FY 2007. The NIC provided a state implementation matrix and a tribal and local implementation matrix as guidance for NIMS compliance. However, a review of the FY 2009 NIMS Implementation Objectives identifies 28 implementation objectives for state, local, and tribal agencies, but none for the federal government. The FEMA NIMS Web site contains an FY 2007 federal NIMS implementation survey without any posted results. Data regarding NIMS compliance by federal agencies is not available (USDHS, FEMA, 2010b).

FEMA utilizes the NIMS Compliance Assistance Support Tool (NIMSCAST), a web-based instrument for state, local, and tribal agencies to conduct self-assessments and report their jurisdiction's achievement of all NIMS implementation activities since 2004. However, NIMSCAST did not reportedly track federal NIMS compliance until approximately FY 2010. The NIC was not able to provide any information regarding federal preparedness and NIMS adoption or compliance at the time of this thesis.

The NIC Incident Management Systems Integration (IMSI) Division issued a five-year NIMS training plan in February 2008. The intended audience of the plan was identified as federal, state, local, tribal, private sector, and nongovernmental organizations. The plan does not exclude federal agencies, but existing laws and rules do not directly impact funding for any failure to meet the NIMS training requirements.

In May of 2009, NIC IMSI distributed the draft "NIMS Implementation Objectives and Metrics for Federal Departments and Agencies" for review prior to

official release to all federal departments and agencies. The NIC ISMI process will reportedly assess NIMS adoption and compliance by federal departments and agencies since they:

play an important role in ensuring effective NIMS implementation; not only must they implement NIMS within their departments and agencies, they must also ensure that the systems and processes are in place to communicate and support NIMS compliance at all jurisdictional levels (United States Department of Homeland Security, Federal Emergency Management Agency. [USDHS, FEMA], 2010a, p. 1)

The draft plan contains 25 implementation objectives in the following NIMS components: adoption; command and management; preparedness; resource management; and communication and information management (USDHS, FEMA, 2010a, pp. 2–3). The assessment has not been fully initiated to determine the level of federal NIMS adoption and training compliance as identified in 2005—a significant influencing factor for this thesis research.

The value of NIMS has been identified in other reports such as the National Emergency Communications Plan, which addressed state and local NIMS adoption in the area of communications for emergency responder skills and capabilities. The report does identify as a gap or obstacle that “some emergency response agencies have not yet received NIMS training or have not adopted NIMS policies” (USDHS, 2008e, p. 30).

The FEMA NIMS training Web site provides conflicting guidance. FEMA states that NIMS is applicable to federal, state, local, and tribal law enforcement responders. However, to the question of to whom NIMS applies, the answer identified on the FEMA NIMS training Web site is: “NIMS is applicable to State, tribal and local governments, private sector organizations, critical infrastructure owners and operators, nongovernmental organizations and other organizations with an active role in emergency management and incident response” (USDHS, 2009d). This answer appears to be in conflict with the empowering documents but consistent with the apparent current level of federal NIMS adoption.

Interestingly, the DHS FY 2008 Congressional Budget Justification, Performance Budget Overview, Verification and Validation of Measured Values stated that the White House collects and reviews information for federal agency NIMS compliance, and states input the information into NIMCAST. Later in the same table, the performance measure states that NIC verifies all federal agency implementation plans for the implementation of NIMS (USDHS, 2008e, pp. A 24–25).

The DHS Federal Preparedness Report (2009) states that nearly all reporting federal departments and agencies assessed themselves as fully compliant with NIMS standards (USDHS, FEMA, 2009a, pp. iii–iv). The preparedness report states that NIMS has been successfully implemented across the nation as a common incident-management framework (USDHS, FEMA, 2009a, p. 12). However later in the report, the federal department and agency compliance level was identified as incomplete due to the voluntary nature of the NIMSCAST reporting requirements (USDHS, FEMA, 2009a, p. 20). According to the report, 68 percent of the federal departments and agencies had not reported their compliance as of 2009.

The DHS Quadrennial Homeland Security Review Report: A Strategic Framework for Homeland Security (2010) identified ensuring resilience to disasters as one of the five primary missions of DHS. The reliance was to be achieved through enhanced preparedness, strengthened capabilities, and effective emergency response by all levels of government, embracing a common doctrine of NIMS and ICS (USDHS, 2010b, pp. 60–63).

More than six years after the release of HSPD-5 and the establishment of NIMS for incident response and management activities, DHS released the memorandum “NIMS Implementation for Federal Department and Agencies” on May 20, 2010. The memorandum repeated the previous FY 2005 guidance that all federal departments and agencies were required to adopt NIMS. However, the memorandum later stated that:

Federal departments, agencies, and other Federal stakeholders *should* implement all relevant actions, answer the metrics, and submit a final self-assessment via the NIMS Compliance Assistance Support Tool (NIMSCAST) by September 30, 2010. (USDHS, 2010a, para. 2) (emphasis supplied)

Along with the DHS memorandum, FEMA released the accompanying FY 2010 NIMS Implementation Objectives and Metrics for Federal Departments and Agencies (USDHS, FEMA, 2010a) document to provide guidance to the federal departments and agencies. The 2010 guidance is consistent with the previous adoption and compliance guidance issued by FEMA for federal, state, local, and tribal governments.

4. Government Accountability Office Reports and Preparedness

The importance of preparedness training and equipment, and its review and oversight, obviously did not start with the release of NIMS, NRP, or NRF. The need for these resources and requirements and the addition of federal capabilities to respond to terrorist attacks have been identified in various Government Accountability Office (GAO) publications, including the 1999 GAO report “Combating Terrorism: Observations on Federal Spending to Combat Terrorism.” GAO recommended that federal agencies take steps to ensure that government-wide priorities are established and that resources are budgeted and allocated based on threat and risk assessments (Government Accountability Office [GAO], 1999a, p. 14). In the 1999 GAO report “Combating Terrorism: Observations on Growth in Federal Programs,” the GAO stated that “the emergence of more federal response elements and capabilities will increase the challenge for the federal government to provide a well-coordinated response in support of a state or local incident commander” (GAO, 1999b, p. 9).

The 2000 GAO report “Combating Terrorism: Federal Response Teams Provide Varied Capabilities; Opportunities Remain to Improve Coordination” continued the focus on the linking of recommended federal preparedness actions and budget resources. The GAO stated that, “Federal agencies lack a coherent framework to develop and evaluate budget requirements for their response teams because there is no national strategy with clearly defined outcomes” (GAO, 2000a, p. 26).

According to another pre-9/11 GAO report, “Combating Terrorism: FEMA Continues to Make Progress in Coordinating Preparedness and Response,” FEMA increased preparedness training and coordinated extensively with responsible federal agencies on terrorism issues (GAO, 2001a, p. 10).

The development of NIMS addressed many, but not all, of the issues identified by GAO in the pre-9/11 reports, but not necessarily on the federal level. Achieving NIMS compliance through training and adoption of the concept in agency plans and policies is often the first step in the preparedness process. The culture of preparedness requires a larger strategic view for its adoption, as referenced in many GAO reports. In the 2002 GAO report “National Preparedness: Integration of Federal, State, Local and Private Sector Efforts is Critical to an Effective National Strategy for Homeland Security,” the importance of preparedness for federal, state, and local agency efforts was addressed not long after the 9/11 attacks. The GAO report provided several relevant findings regarding the federal government and preparedness:

The success of a national preparedness strategy relies on the ability of all levels of government and the private sector to communicate and cooperate effectively with one another (Yim, 2002, p. 8);

State and local response organizations believe that federal programs designed to improve preparedness are not well synchronized or organized (Yim, 2002, p. 10.); and

The design of federal policy will play a vital role in determining success and ensuring that scarce federal dollars are used to achieve critical national goals. (Yim, 2002, p. 18)

According to state and local officials, the driving force to encourage NIMS compliance and preparedness has been the restriction of grants and other funding assistance to state, local, and tribal agencies without meeting certain requirements. However, NIMS training compliance without a strategy and coordination does not often result in preparedness. In a 2005 GAO report, “Homeland Security: Managing First Responder Grants to Enhance Emergency Preparedness in the National Capital Region,” the grants were identified as a means to achieve the preparedness goal, but more was required to achieve this coordinated preparedness. The GAO recommended the development of a strategic plan to coordinate the funds, monitor the expenditures, and identify and assess gaps (GAO, 2005b, p. 2). The GAO report identified the importance of a strategic plan for the most effective and efficient application and deployment of resources.

The 2005 GAO report, “Homeland Security—DHS’ Efforts to Enhance First Responders’ All-Hazards Capabilities Continue to Evolve,” addressed the federal challenge of developing and maintaining a national preparedness goal while considering the costs and level of government responsible for funding. The report also addressed the challenges of self-reported information from various levels of government in aggregating and evaluating a national strategy (GAO, 2005a, p. 43).

The GAO report issued in 2006, “Hurricane Katrina: GAO’s Preliminary Observations Regarding Preparedness, Response and Recovery,” reviewed the challenges encountered before, during, and after Hurricane Katrina. The report identified important considerations, for example, that DHS should “provide strong oversight of federal, state, and local planning, training, and exercises to ensure such activities fully support preparedness, response, and recovery responsibilities at a jurisdictional and regional basis” (GAO, 2006c, p.15). The GAO report does not exempt the federal government from planning, training, and exercising requirements to support preparedness, response, and recovery. The federal government is viewed by the GAO as a partner in the process.

The 2006 GAO report, “Emergency Preparedness and Response: Some Issues and Challenges Associated with Major Emergency Incidents,” stated that sustained leadership and coordinated stakeholder efforts are required to assess, develop, attain, and sustain preparedness (GAO, 2006b, p.15). The report did not exclude the federal government as a stakeholder for preparedness and response. On the contrary, according to GAO, 9/11 fundamentally changed the context of emergency management preparedness in the United States, including federal involvement in preparedness and response (GAO, 2006b, p. 1).

In 2006, GAO issued the report, “Catastrophic Disasters: Enhanced Leadership, Capabilities and Accountability Controls Will Improve the Effectiveness of the Nation’s Preparedness, Response and Recovery System,” to assess the three basic elements of leadership, capabilities, and accountability. As with many other studies, this report focused on the lessons learned from Hurricane Katrina, including NRP and NIMS. The

report identified recommendations such as providing guidance for federal preparedness planning and training and monitoring federal agency efforts to meet NRP and NIMS responsibilities (GAO, 2006a, p. 99).

The 2007 GAO report, “Homeland Security: Observations on DHS and FEMA Efforts to Prepare for and Respond to Major and Catastrophic Disasters and Address Related Recommendations and Legislation,” evaluated the changes since Hurricane Katrina in the areas of roles and responsibilities, capabilities and accountabilities (GAO, 2007b, p. 2). The GAO report identified improvements but also the challenges still existing for all levels of government. The 9/11 attacks resulted in the subsequent issuance of billions of dollars in grants and assistance, but the 2005 hurricane season resulted in the reassessment of the federal role in preparedness and response (GAO, 2007b, p. 27).

The 2007 DHS GAO report, “Department of Homeland Security: Progress Report on Implementation of Mission and Management Functions,” GAO reviewed 171 performance expectations. The GAO had made approximately 700 recommendations to DHS to strengthen homeland security operations. GAO identified 24 emergency preparedness and response performance expectations for which 18 were not achieved according to the report (GAO, 2007a, p. 125). The report gave credit to DHS for developing and enhancing NIMS, but it criticized DHS’s inability to fully verify the level of state, local, and tribal NIMS training compliance (GAO, 2007a, p. 132). However, the actual level of federal compliance was not addressed by GAO.

5. Congressional Research Service Reports and Preparedness

In addition to GAO reports and findings, the Congressional Research Service (CRS) assessed preparedness in several relevant reports. The CRS report, “Emergency Management Preparedness Standards: Overview and options for Congress,” addressed the adoption of ICS nationwide in 2005. CRS addressed the state and local training, resource, funding, and response issues (Bea, 2005a, pp. 13–17). The CRS report addressed the importance of NIMS and ICS compliance for state, local, and tribal agencies without directly addressing the federal agencies’ training and implementation compliance. The report concludes:

It is also possible that the actions taken by Congress will stimulate and maintain a commitment of non-federal resources and capabilities by funding programs, encouraging DHS and the states to incorporate standards in their operational procedures, and more fully engage in emergency management activities. (Bea, 2005a, p. 23)

The CRS 2005 report “Organization and Mission of the Emergency Preparedness and Response Directorate: Issues and Options for the 109th Congress” reviewed the DHS second-stage review changes, including FEMA. The report identified the preparedness authorities in other federal agencies (Bea, 2005b, pp. 21–23). The report recommended many options to improve preparedness, such as a new federal office to ensure that federal emergency preparedness and response actions are coordinated and not duplicative (Bea, 2005b, p. 54).

The CRS report “Federal Emergency Management Policy Changes After Hurricane Katrina: A Summary of Statutory Provisions” addressed many post-2005 hurricane-season issues in this 2006 document. The CRS report addressed federal preparedness, stating that the DHS is not the only “agency” responsible for having the capability to comply with NIMS and to train response personnel (Bea, 2006, pp. 33–34).

The CRS 2008 report “Homeland Emergency Preparedness and the National Exercise Program: Background, Policy Implications, and Issues for Congress” addressed the concern about the sufficiency of current preparedness policies and responsibilities. The report focused on preparedness and its assessment through exercises and the confusion of various empowering laws and plans designating responsibility (Peterson, 2008, pp. 27–29).

6. Financial Incentives

Financial incentives appear to influence preparedness adoption and NIMS compliance as a driving force beyond the basic appreciation of the concept. HSPD-5 directs federal departments and agencies to make state and local NIMS adoption a requirement for providing federal preparedness assistance through grants, contracts, and other activities beginning in FY 2005 (White House, 2003a, Goal 20). HSPD-8 provides guidance regarding the requirements for awarding federal preparedness assistance and

equipment to state and local governments (White House, 2003b, Goals 8–16). Federal departments and agencies are directed to utilize NIMS compliance in the award of grants and assistance to state, local, and tribal agencies.

DHS announced FY 2009 grant guidance for over \$3 billion in preparedness grant funding through 14 programs in November of 2008. The purpose of the state and local government funding was to strengthen community preparedness. The DHS Homeland Security Grant Program, FY 2009 Overview (USDHS, 2008a, p. 1) identified the following seven preparedness programs within the Homeland Security Grant Program (HSGP):

- Homeland Security Grant Program;
 - State Homeland Security Program;
 - Urban Areas Security Initiative;
 - Metropolitan Medical Response System;
 - Citizen Corps Program;
- State Homeland Security Program Tribal;
- Nonprofit Security Grant Program; and
- Operation Stonegarden Grant Program.

According to the HSGP FY 2009 Overview, FEMA’s comprehensive collection of grant programs is an important part of the government’s larger, coordinated effort to strengthen homeland security preparedness according to NIMS, NRP, and the National Preparedness Guidelines and National Infrastructure Preparedness Plan (USDHS, 2008a, p. 1). The overview also identified another 10 grant programs administered by DHS. The grants were limited to eligible recipients within state, local, and tribal governments. As of FY 2010, HSGP does not provide a funding or motivating method for the federal law enforcement community.

FEMA Information Bulletin No. 338, Fiscal Year 2010 Program Guidance and Application Kits (USDHS, FEMA, 2009b, p. 1) stated that over \$2.7 billion was available to state, local, and tribal governments for grant funding through the following federal programs:

- Emergency Management Performance Grants (EMPG) Program;
- Emergency Operations Center (EOC) Grant Program;
- Driver's License Security Grant Program (DLSGP);
- Interoperable Emergency Communications Grant Program (IECGP);
- Buffer Zone Protection Program (BZPP);
- Port Security Grant Program (PSGP);
- Freight Rail Security Grant Program (FRSGP);
- Intercity Passenger Rail—Amtrak (IPR) Program;
- Intercity Bus Security Grant Program (IBSGP);
- Homeland Security Grant Program (HSGP);
- Tribal Homeland Security Grant Program (THSGP);
- Urban Areas Security Initiative (UASI) Nonprofit Security Grant Program (NSGP); and
- Regional Catastrophic Preparedness Grant Program (RCPGP).

None of the grant programs above identified the federal law enforcement community as being eligible for funding access.

A review of numerous state emergency management Web sites documented the NIMS requirements and sources of information for compliance to become eligible for the HSGP (see Chapter III). The two factors of greatest influence identified at the Web sites were the benefits of the Incident Command System (ICS) within NIMS and access to the federal grant programs. NIMS training compliance has been more consistent within the fire service due to its long history of ICS in emergency response.

Emergency management is a complex policy subsystem that involves an intergovernmental, multiphased effort to prepare for disasters. Donahue and Joyce (2001,

p. 728), report that the current rules for budgeting may inappropriately promote focus and spending on disaster response and recovery rather than preparedness. The various homeland security preparedness grants listed above have been developed since 2001 to better focus on preparedness, rather than response.

The Government Performance and Results Act of 1993 (GPRA) was enacted to improve accountability within the federal government and to enhance its budget for the benefit of the taxpayer. According to Butterworth and Metzger (1998, p. 35), GPRA required agencies to end the practice of managing activities with little or no attention to their consequences. Through their annual plans, federal agencies were to establish levels of measurable performance targets to attain their objectives.

As stressed by Jonathan D. Bruel (2009, p. 71) in discussing the impact of GPRA, “To become a high-performing enterprise, government needs to transform the culture of its organizations to work closely with other governments, nonprofits, and the private sector, domestically and internationally, to achieve results.” However, GPRA has not had an observable affect on the federal law enforcement community in the area of preparedness adoption and compliance, but an analysis of its implementation and impact since 1993 may assist in the study of this subject if GPRA can be determined as relevant for this issue.

7. Federal Preparedness Adoption and Compliance

In 2006 and 2007, a federal law enforcement agency developed and released nine national emergency preparedness policies to direct and encourage preparedness within the agency. The policies resulted from an assessment of the agency’s response to Hurricane Katrina and the lessons learned regarding the importance of preparedness. Several of the policies remain partially implemented by the agency, especially regarding NIMS training compliance and policy modification for NIMS adoption. In 2007, a large portion of the law enforcement field managers were instructed to complete the basic NIMS training via the FEMA online training site. However, research indicates that fewer than 2,000

employees have completed all of their recommended preparedness training in an agency of approximately 20,000 employees. The exact number of employees is not known since it is not nationally tracked by FEMA or the agency.

Subsequent research indicated that another federal law enforcement agency estimated that fewer than 2,000 of their approximately 50,000 employees have completed all of the required NIMS training. The exact number of employees is not known since it is not nationally tracked by FEMA or the second agency.

A search of the Web sites of many of the largest federal law enforcement agencies did not provide documentation regarding their adoption of NIMS or its training requirements (see, e.g., Web sites for FBI, <http://www.fbi.gov>; ATF, <http://www.atf.gov>; DEA, <http://www.justice.gov/dea/index.htm>; USSS, <http://www.secretservice.gov/>; and USMS, <http://www.justice.gov/marshals/>). However, one department with a smaller law enforcement component did possess an available and applicable policy with NIMS guidance and direction. The Department of Interior, U.S. Fish and Wildlife Service developed a plan, Environmental Safeguards Plan for All-Hazards Emergencies, that addressed preparedness, NRP, and NIMS compliance (United States Department of Interior, U.S. Fish and Wildlife Service, 2009, pp. 4–5).

Research located federal departments and agencies without significant law enforcement components that have adopted NRP and NIMS preparedness requirements. The Department of Energy (DOE) implemented NRP and NIMS into its 2007 “Emergency Management and Fundamentals and the Operational Emergency Base Program—Emergency Management Guide” policy document adhering to the basic national preparedness requirements and recommendations. According to DOE: “The DOE NIMS implementation plan was published in February 2005, requiring all Departmental elements to complete implementation of NIMS by September 30, 2005, or when their surrounding jurisdictions implemented NIMS” (United States Department of Energy [USDOE], 2007a, pp. 16–18). The DOE “Programmatic Elements—Emergency Management Guide” also addressed the NRP and NIMS adoption and compliance guidelines (USDOE, 2007b).

The Department of Health and Human Services identified NIMS adoption, utilization, and compliance in its policies, guides, Web site, and press releases. The HHS Office of Preparedness and Emergency Operations oversees the NRP- and NIMS-related responsibilities according to the HHS Organizational Manual (United States Department of Health and Human Services [HHS], HHS policy manual, AN-2.AN-3). HHS also encouraged responders such as Medical Reserve Corps personnel to become NIMS compliant.

8. Future Expectation for Emergency Declarations

Due to his research regarding presidential disaster declarations during floods, Richard T. Sylves (2005, p. 8) has stated, “Modern presidents face immense pressure by legislators and by nonfederal officials to approve even marginal requests for presidential disaster declarations. Increased media coverage of disasters, especially by national broadcasts, is today a major intervening variable in a president’s approve or reject calculus. Changes in disaster law have expanded eligibility for declarations and for a wider variety of disaster causes.” The increase in disaster declarations over the years has not been limited to major flooding incidents.

In his research on the use of federal emergency declarations for disasters, Matt A. Mayer found a growing increase in their use since the 1950s, especially since the early 1970s. Mayer found that, from 1972 to 1979, the number of emergency declarations per year had doubled from the preceding 20 years. After the creation of FEMA in 1979 and the passing of the Stafford Act in 1988, the federal government’s involvement in disaster response continued to increase. Between 1980 and 1992, FEMA was involved in an average of 33 emergency declarations a year. From 1993 to 2001, FEMA’s involvement in disasters increased to an average of 89 declarations a year. FEMA involvement in disasters increased to an average of 130 declarations a year between 2001 and 2009 (Mayer, 2009, pp. 96–97).

Mayer believes that the increase in the use of emergency declarations over the years was the result of the federal government’s willingness to fund incident preparedness, response, and recovery for political purposes, resulting in reduced planning

and preparedness by state and local governments. According to Mayer, “the fundamental reality is that the current federalization of disasters is about nothing more than money and politics.” (2009, p. 100) As an advocate of federalism, Mayer believes that state and local governments should plan and prepare to handle their own incidents without federal involvement, except for the most serious disasters, in order to maintain their capability to serve their citizens.

Sylves (2005, p. 6) concurs with Mayer’s concerns that “governors are tempted to ask for declarations in advance of the onset of disaster because they reason that county and municipal disaster response will be more robust if federal subsidization of response costs is assured ahead of time.” This strategy for state and local preparedness can question the seriousness of the governors in promoting preparedness and their definition of being overwhelmed during an incident, requiring federal support and funding.

In his research regarding the president’s emergency powers, Sylves found that approximately 66 percent of the presidential declaration requests submitted by the governors were approved and approximately 34 percent were denied between May 1953 and December 2003 (2005, p. 8). The one-third of the requests that were denied during this time period may have contained incidents considered too marginal or insufficient for disaster acceptance by the president, even with the possible political benefits.

If these trends continue, the federal law enforcement community can expect an increase in responses to support state, local, and tribal governments during disasters with emergency declarations. The apparent low level of appreciation for preparedness adoption and compliance may be troublesome for the federal law enforcement community if state, local, and tribal governmental expectations maintain their current level or continue to increase in the future.

9. The Value of NIMS

Even though the importance of preparedness adoption and compliance, especially through NIMS, has been identified in numerous national directives, plans, policies, studies, and after-action reports, there are differing points of view on the value of NIMS.

Critics of NIMS and ICS frequently question whether the incident command structures can facilitate the intergovernmental, multiorganizational, and intersectoral collaboration necessary for large-scale disasters (Waugh, 2009, p. 159). William L. Waugh continues:

Now, local and state responders are required to adopt ICS and to be compliant with NIMS to qualify for federal funds and to receive federal disaster assistance. The implementation of ICS has not been without critics, but NIMS has drawn far more criticism. Critics have tried to draw attention to the shortcomings of such hierarchical, command-focused systems, the problem of command when no one has (or many have) legal and political authority, and the resources and response capacities that are not accommodated by closed administrative systems. (2009, p. 165)

With the release of NIMS in a post-9/11 world, questions also exist as to whether it is too focused on terrorism. The aftermath of Hurricane Katrina may have moved the NIMS pendulum back towards the natural-disaster side of the spectrum for a more all-hazards focus. This shift can be observed in the changes in homeland security priorities between the terrorism focus in the National Strategy for Homeland Security (White House OHS, 2002) and the all-hazards focus in the National Strategy for Homeland Security (White House HSC, 2007).

The appropriate balance of NIMS in the all-hazards world will continue to be the topic of many important and healthy discussions and debates in the future by responders and policy makers alike, especially after each significant incident. However, these debates and discussions should not be carried on at the expense of the implementation of NIMS and ICS training. As identified by Waugh, “Adequate training and experience are necessary for ICS to work, and that is a significant problem when many agencies do not use ICS and those that do may not use it often, even to maintain a trained cadre” (Waugh, 2009, p. 174).

But why is preparedness adoption and compliance truly important, or even relevant, for the federal law enforcement community? Is NIMS really an essential part of the various missions and duties of the federal law enforcement community? Research and

experience¹ reveal that preparedness adoption and compliance are important for the federal law enforcement community and our nation for two primary reasons:

- The federal government is a critical component of the national incident response and management strategy to support state, local, and tribal governments during significant man-made attacks and natural disasters. As previously documented, the number of significant incidents and disasters receiving federal support has been increasing over the past 40 years and will likely continue to increase in the future unless cultural, political, and financial preparedness perspectives change; and
- NIMS and ICS provide important knowledge, skills, and abilities to enhance coordination, cooperation, and collaboration within and between the departments and agencies during their daily interagency operations and joint incident responses on the federal level.

The value of NIMS for the federal law enforcement community can be debated by leadership and policy makers since emergency response is not the primary responsibility of many federal departments and agencies. However, federal departments and agencies need to be prepared to respond to incidents under their jurisdiction and to support other federal, state, local, and tribal agencies during significant incidents when existing resources are insufficient or overwhelmed.

If the federal law enforcement community does not expect to respond to another significant national incident to support its state, local, and tribal partners in the future, research and analysis reveal that those in that position have not adequately studied the past or properly anticipated the current trends for the future. Until a new preparedness and response system is established, developed, and implemented, NIMS is the national process designated for successful planning, preparedness, and response.

¹ The writer was the acting director and deputy director for the national incident response unit of a DHS law enforcement agency for two years and oversaw the agency response to Hurricane Katrina. The writer also represented the agency in more than 70 emergency preparedness and response interagency working groups.

D. HYPOTHESIS

Homeland security grants and other federal funding sources have affected and influenced state, local, and tribal preparedness adoption and compliance levels, especially in the NIMS and NRF environment. However, preparedness adoption and compliance have not been achieved within the federal law enforcement community. If the financial incentives through federal grants have influenced and driven the state, local, and tribal governments to preparedness adoption through NIMS compliance, then a federally focused funding source, outside the existing budgeting process, would likely produce similar results for the federal law enforcement community. At this time, there is no specifically directed financial mechanism such as HSGP to encourage the federal government to adhere to its own preparedness mandates, recommendations, and requirements, other than their existing budgets.

It is important that policy and decision makers nationwide consider a new concept of financial incentives to enhance preparedness within the federal law enforcement community. An analysis of the costs and benefits of preparedness adoption and compliance would provide relevant and beneficial information for department and agency leadership to consider when addressing this homeland security issue. Preparedness adoption and compliance could also reduce possible exposure to legal liability claims against the federal law enforcement community by its employees and the public.

When the old sticks do not work, it is time for a new, innovative carrot to resolve this homeland security challenge.

E. SIGNIFICANCE OF RESEARCH

The significance of this research lies in the development and evaluation of a novel conceptual policy and plan to encourage preparedness adoption and compliance within the federal law enforcement community in order to strengthen national capabilities. The current policies and practices have not proven effective for widespread NIMS and NRF adoption and implementation.

This thesis will provide a method to assess some of the costs and benefits of preparedness adoption and compliance by the federal law enforcement community to assist policy and decision makers in the executive and legislative branches. This research will be of benefit to leadership within the federal government in determining the resources and efforts required to adhere to the preparedness requirements and recommendations. This research may also benefit department and agency leadership by presenting the importance of this subject for their review and consideration.

State, local, and tribal agencies, along with private organizations, could benefit from the increased level of federal preparedness adoption and compliance that might result from this thesis. Enhanced preparedness could also assist the federal law enforcement community to better plan for, prepare for, respond to, and manage incidents and events, both domestic and international, with other federal civilian and military organizations in a more effective and efficient manner in order to enhance resilience.

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II. METHODOLOGY

Through an analysis of the current policies and an evaluation of projected costs and benefits, this thesis will address the development of a novel financial incentive for the federal law enforcement community. The literature review establishes the foundation of the preparedness requirements and recommendations identified in many national directives, plans, policies, studies, after-action reports, and other relevant documents.

The first step was to examine the influence of preparedness requirements, recommendations, and financial incentives for state, local, and tribal governments that resulted in NIMS adoption and compliance. This analysis served to identify the influencing factors for preparedness adoption and compliance by the state, local, and tribal agencies, including costs and benefits, and including state emergency-management agency Web sites and their guidance.

The second step was to examine the ramifications of potential legal liability should the federal law enforcement community fail to adopt and comply with preparedness requirements and recommendations. This analysis served to explore the current implications and ramifications associated with the failure to train employees for the responsibilities that can be anticipated by a department or agency, including those associated with emergency preparedness and response during a significant incident. Case law was analyzed to identify possible future liability for a department or agency for failure to train its employees, including the potential for a significant legal determination of deliberate indifference in the context of civil-rights litigation claims.

The third step was to analyze the financial costs and benefits of a generic federal law enforcement agency adherence to NIMS preparedness requirements, with a specific focus on the training requirements and their costs and benefits to a department or agency. The costs and benefits of the preparedness adoption and compliance recommendations and requirements were researched to provide a comprehensive understanding for the agency leader and policy maker through a generic agency example focusing on the

potential training costs. This step served to demonstrate that the benefits of preparedness requirements and recommendations outweigh the costs by producing benefits on several levels.

Finally, the issues, information, and data from the previous steps were synthesized to develop a new federal incentive concept to expand benefits and reduce costs for the departments and agencies. The financial incentive concept provides a framework of goals and milestones with linked financial incentives to encourage department and agency accomplishments and subsequent achievements.

III. STATE, LOCAL, AND TRIBAL COMPLIANCE

NIMS preparedness adoption and compliance by state, local, and tribal governments have been encouraged by access to federal grants through many of the documents identified in the literature review, as well as the FEMA requirements and guidance issued for each fiscal year. The importance of NIMS and its training requirements was identified for grant access in the DHS Fiscal Year 2005 Homeland Security Grant Program—Program Guidelines and Application Kit. According to the 2005 HSGP document, “the NIC is working with federal departments and agencies to ensure that they develop a plan to adopt NIMS and that all FY05 federal preparedness assistance program documents begin the process of addressing state, territorial, tribal, and local NIMS implementation. All HSGP award recipients and their SAAs (State Administrative Agency) must coordinate with other state agencies, tribal governments, and local jurisdictions to ensure NIMS implementation.” (USDHS, Office of State and Local Government Coordination and Preparedness, Office of Domestic Preparedness, 2005, p. 46) The 2005 HGSP document identifies the minimum NIMS preparedness training and compliance requirements starting in Fiscal Year 2005.

The DHS Fiscal Year 2009 Homeland Security Grant Program—Guidance and Application Kit (USDHS, 2008c, p. 26) further clarifies the preparedness requirements:

To be eligible to receive FY 2009 HSGP funding, applicants must meet NIMS compliance requirements. The NIMSCAST will be the required means to report FY 2008 NIMS compliance for FY 2009 preparedness award eligibility. All State and territory grantees were required to submit their compliance assessment via the NIMSCAST by September 30, 2008 in order to be eligible for FY 2009 preparedness programs. The State or territory department/agency grantee reserves the right to determine compliance reporting requirements of their sub-awardees (locals) in order to disperse funds at the local level.

The influence of these requirements and grants can also be identified in the information provided by the state emergency management Web sites regarding preparedness adoption and compliance for access to federal funding. Table 1 identifies the following:

- Whether the state references the NIMS training requirements on the Web site;
- Whether the state identifies the NIMS requirements for access to federal grants and grant information links; and
- Whether the state links or references the national NIMS documents, guidance or Web sites for additional information.

Table 1. List of State Web Sites Regarding NIMS and Grants

STATE	NIMS	FUNDING	LINKS	WEB SITE REFERENCES
Alaska	X	X	X	http://www.ak-prepared.com/ , http://www.ak-prepared.com/grant_forms and http://ready.alaska.gov/training/links.htm
Alabama	X	X	X	http://ema.alabama.gov/ and http://ema.alabama.gov/Organization/Preparedness/NIMS.cfm
Arizona	X	X	X	http://www.dem.azdema.gov/index.html , http://www.dem.azdema.gov/preparedness/index.html and http://www.dem.azdema.gov/preparedness/training/grants.html
Arkansas	X	X	X	http://www.adem.arkansas.gov/ and http://www.adem.arkansas.gov/documents/portal/SHSGP/index.html
California	X	X	X	http://cms.calema.ca.gov/preparednesshome.aspx and http://cms.calema.ca.gov/prep_em_nims.aspx
Colorado	X	X	X	http://www.dola.state.co.us/ and http://www.dola.state.co.us/dem/nims_implementation.pdf
Connecticut	X	X	X	http://www.ct.gov/demhs/cwp/view.asp?a=1932&q=441468&demhsNav=44478 and http://www.ct.gov/demhs/cwp/view.asp?a=1910&q=411684&demhsNav=44478
Delaware	X	X	X	http://dema.delaware.gov/ , http://dema.delaware.gov/services/training_courses_1.shtml and http://dema.delaware.gov/information/terror_prep.shtml
Florida	X	X	X	http://www.floridadisaster.org/Preparedness/TrainingandExercise/index.htm , http://www.floridadisaster.org/grants/index.htm and http://www.floridadisaster.org/EMIT/introductionem.htm

Georgia	X	X	X	http://www.gema.ga.gov/ohsgemaweb.nsf/
Hawaii	X	X	X	http://www.honolulu.gov/dem/ , http://www.honolulu.gov/csd/budget/20ocda.pdf and http://www.honolulu.gov/dem/homelandsecurity.htm
Idaho	X	X	X	http://www.bhs.idaho.gov/ , http://www.bhs.idaho.gov/Pages/Plans/NIMS/NIMS_I_CS.aspx and http://www.bhs.idaho.gov/Pages/FinanceAndLogistics/Grants.aspx
Illinois	X	X	X	http://www.state.il.us/iema/index.asp and http://www.state.il.us/iema/training/training.asp
Indiana	X	X	X	http://www.in.gov/dhs/index.htm , http://www.in.gov/dhs/2559.htm and http://www.in.gov/dhs/grants.htm
Iowa	X	X		http://www.iowahomelandsecurity.org/ and http://www.iowahomelandsecurity.org/AboutHSEMD.html http://www.iowahomelandsecurity.org/Documents/Strategy_2009-2014.pdf
Kansas	X	X	X	http://www.kansas.gov/kdem/ , http://www.kansas.gov/kdem/nims/ and http://www.kansas.gov/kdem/grants/
Kentucky	X	X	X	http://kyem.ky.gov/default.htm , http://kyem.ky.gov/training/ and http://homelandsecurity.ky.gov/fy+2009+hsgp+application+workshops.htm
Louisiana	X	X	X	http://gohsep.la.gov/default.aspx , http://gohsep.la.gov/nims.aspx and http://gohsep.la.gov/hsgantprgindex.aspx
Maine	X	X	X	http://www.maine.gov/mema/homeland/index.shtml , http://www.maine.gov/mema/homeland/home_grants_current.shtml and http://www.maine.gov/mema/programs/training/mema_prog_training.shtml
Maryland	X	X	X	http://www.mema.state.md.us/MEMA/index.jsp and http://www.mema.state.md.us/NIMS/index.jsp http://www.mema.state.md.us/NIMS/index.jsp#
Massachusetts	X	X	X	http://www.mass.gov/?pageID=eopssubtopic&L=5&L0=Home&L1=Funding+%26+Training+Opportunities&L2=Homeland+Security&L3=Training+and+Courses&L4=National+Incident+Management+System+(NIMS)&sid=Eeops http://www.mass.gov/?pageID=eopssubtopic&L=5&L0=Home&L1=Funding+%26+Training+Opportunities&L2=Homeland+Security&L3=Training+and+Courses&L4=National+Incident+Management+System+(NIMS)&sid=Eeops
Michigan	X	X	X	http://www.michigan.gov/msp/0,1607,7-123-1593_3507---,00.html ,

				http://www.michigan.gov/msp/0,1607,7-123-1593_3507-191891--,00.html and http://www.michigan.gov/msp/0,1607,7-123-1593_3507_41574-234387--,00.html
Minnesota	X	X	X	http://www.hsem.state.mn.us/ , http://www.dps.state.mn.us/dhsem/uploadedfile/HSEM&MNSCUInfoSheet.pdf and http://www.hsem.state.mn.us/Hsem_Category_Home.asp?catid=2
Mississippi	X	X	X	http://www.msema.org/training/ and http://www.homelandsecurity.ms.gov/training_links.html
Missouri	X	X	X	http://sema.dps.mo.gov/nimscast1.htm and http://sema.dps.mo.gov/terrorism.htm
Montana	X	X	X	http://dma.mt.gov/des/Training/MT%20TEP%202008-2010_FINAL.pdf and http://dma.mt.gov/des/homelandsecurity/
Nebraska	X	X	X	http://www.nema.ne.gov/index_html?page=content/home_news/grants_home.html and http://www.nema.ne.gov/index_html?page=content/training/Training_Schedule.htm
Nevada	X	X	X	http://www.dem.state.nv.us/grants_management.shtml and http://www.dem.state.nv.us/DEM_Calendars2.shtml
New Hampshire	X	X	X	http://www.nh.gov/safety/divisions/homeland/index.html and http://www.nh.gov/safety/divisions/hsem/Training/index.html
New Jersey	X	X	X	http://nims.nj.gov/ and http://nims.nj.gov/overview.html
New Mexico	X	X	X	www.nmdhsem.org/cms/.../200113945-01-08-2009-10-07-30.doc and http://preparedness.nmdhsem.org/content.asp?CustComKey=274124&CategoryKey=274125&pn=Page&DomName=preparedness.nmdhsem.org
New York	X	X	X	http://www.semo.state.ny.us//programs/training/ICS/ICSexplain.cfm
North Carolina	X	X	X	http://www.nccrimecontrol.org/Index2.cfm?a=000003,000010,000027,001572 and http://www.nccrimecontrol.org/Index2.cfm?a=000003,000010,000527,000537,000538
North Dakota	X	X	X	http://www.nd.gov/des/homeland/ and http://www.nd.gov/des/training/
Ohio	X	X	X	http://ema.ohio.gov/NimsGuidance.aspx and http://ema.ohio.gov/PreparednessGrantsBranch.aspx
Oklahoma	X	X	X	http://www.ok.gov/OEM/News/2006_News/State_Emergency_Fund_Meeting_2006.html and

				http://www.ok.gov/OEM/Programs_&Services/Training_Information/2009newdirector.html
Oregon	X	X	X	http://www.oregon.gov/OMD/OEM/plans_train/grant_info.shtml http://www.oregon.gov/OMD/OEM/plans_train/plans_training.shtml#Training_Exercise and http://www.oregon.gov/OSP/SFM/docs/Emergency.../NIMS-IS-700-DPWG-v31.doc
Pennsylvania	X	X	X	www.pema.state.pa.us , http://www.pema.state.pa.us/portal/server.pt/community/training_and_exercises/4684 and http://www.portal.state.pa.us/portal/server.pt?open=512&objID=4463&mode=2&PageID=454038
Rhode Island	X	X	X	http://www.riema.ri.gov/ , http://www.riema.ri.gov/preparedness/training/ and http://www.riema.ri.gov/prevention/grants/
South Carolina	X	X	X	http://www.scemd.org/ and http://www.scemd.org/Library/NIMS/intro.html
South Dakota	X	X	X	http://dps.sd.gov/emergency_services/emergency_management/default.aspx , http://dps.sd.gov/emergency_services/emergency_management/training.aspx and http://dps.sd.gov/homeland_security/grants.aspx
Tennessee	X	X	X	http://www.tnema.org/ , http://www.tnema.org/ema/training/index.html and http://www.tnema.org/ema/grants/index.html
Texas	X	X	X	http://www.txdps.state.tx.us/dem/ , http://www.txdps.state.tx.us/dem/pages/grants.htm and http://www.txdps.state.tx.us/dem/pages/trainingexerciseinfo.htm
Utah	X	X	X	http://publicsafety.utah.gov/homelandsecurity/ , http://publicsafety.utah.gov/homelandsecurity/training.html and http://publicsafety.utah.gov/homelandsecurity/grants.html
Vermont	X	X	X	http://www.dps.state.vt.us/vem/ , http://www.dps.state.vt.us/vem/grants.htm , http://www.dps.state.vt.us/vem/training/index.html , and www.dps.state.vt.us/vem/training/2007training/NIMSAlert.doc
Virginia	X	X	X	http://www.vdem.state.va.us/ , http://www.vaemergency.com/programs/nims/index.cfm and http://www.vaemergency.com/grants/index.cfm
Washington	X	X	X	http://www.emd.wa.gov/ , www.emd.wa.gov/training/documents/STB06-0021CSEquivalencyAug09.pdf and http://www.emd.wa.gov/grants/grants_index.shtml

West Virginia	X	X	X	http://www.wvdhsem.gov/ , http://www.wvdhsem.gov/training.htm and http://www.wvdhsem.gov/more_resources.htm
Wisconsin	X	X	X	http://emergencymanagement.wi.gov/ , and http://emergencymanagement.wi.gov/nims/default.asp
Wyoming		X	X	http://wyohomelandsecurity.state.wy.us/main.aspx and http://wyohomelandsecurity.state.wy.us/grants.aspx

An analysis of Table 1 indicates that all of the state emergency-management agency Web sites identify the importance of NIMS adoption and compliance for state, local, and tribal agencies to be eligible to receive federal grants and other funding. The state Web sites provide information regarding the FEMA training requirements and links to other Web sites to obtain additional information. The consistency of the three linked categories and the importance placed on them on the Web sites indicates that NIMS adoption and compliance were associated with access to federal funding.

In addition to the recognition of NIMS compliance for federal grant access by the 50 states, professional associations also provide guidance to their members. In *National Incident Management System (NIMS) Guide for County Officials* (2006, p. 3), the National Association of Counties and International Association of Emergency Managers advised that all federal preparedness assistance was contingent on the states' compliance with NIMS to gain access to HSGP, Emergency Management Performance grants, and the Urban Area Security Initiative as of October 1, 2006.

The International Association of Chiefs of Police, through the *Police Chief* magazine, identifies the importance of NIMS compliance to receive federal funding (LeBlanc, 2006, p. 2) and the HSPD-5 requirements beginning in FY 2005 for NIMS compliance for grant access (Herron, 2004, p. 4). The International Association of Fire Chiefs (IAFC), through its Web site, identifies the importance of NIMS compliance for grant and funding access (Gardner, 2010, para. 9) and the HSGP Fiscal Year 2006 goals for implementing NIMS in the fire service (IAFC, 2005, para.1-8).

Analysis in this chapter reveals that NIMS adoption and compliance by the state, local, and tribal governments have been influenced by the access restrictions for federal grants and other funding sources. The state administrative agencies, functioning as primary points of contact for grant recipients, provide the guidance and direction to the local and tribal governments. According to the various Web sites and research above, the benefits of access to federal funding have outweighed the costs of NIMS preparedness adoption and compliance for state, local, and tribal agencies. Due to the amount of federal funds distributed to compliant state, local, and tribal agencies each year, NIMS preparedness adherence, truly valued or not by the organizations, is an important driving factor.

IV. POTENTIAL LEGAL LIABILITY

In addition to the NIMS preparedness requirements, an analysis of the numerous preparedness strategies, plans, policies, and other documents and references identified in the literature review establish potential legal liability for claims of failure to train and deliberate indifference against a federal department or agency. The totality of the preparedness documents and after-action reports provides evidence that the federal law enforcement community is not formally exempted or excepted from national training requirements, including NIMS and NRF preparedness adoption and compliance training. Previous court cases document that, if appropriate or required training is not provided and subsequent injury occurs, the department or agency may become liable for the actions of its organization and employees through the legal concepts of failure to train and deliberate indifference.

A. FAILURE TO TRAIN

One of the earliest relevant law enforcement failure-to-train court cases was *Popow v. City of Margate*, 476 F. Supp. 1237 (D.N.J. 1979). In *Popow*, the federal court held that the agency was liable for the failure to train its officers in the use of deadly force. Discounting the city's defense that additional use-of-force training was too expensive, the trial court imposed a six-figure judgment for damages against the city (Scuro, 2002, p. 12).

Eight years later, in *Fronk v. Meager*, 417 N.W. 2d 807 (N.D. 1987), the court held that if an agency provides a tool to an officer, it must provide training to go with it. *Fronk v. Meager* may be relevant when a federal department or agency provides equipment or supplies to its employees without proper training for an immediate incident response such as the 9/11 attacks or Hurricane Katrina.

In *Anderson v. Creighton*, 483 U.S. 635 (1987), the Supreme Court held that the federal agency "should furnish the kind of training for its law enforcement agents that

would entirely eliminate the necessity for the Court to distinguish between the conduct that a competent officer considers reasonable and the conduct that the Constitution deems reasonable.”

In the often-cited decision *City of Canton, Ohio v. Harris*, 489 U.S. 378 (1989), the Supreme Court ruled that a municipal government may, in certain circumstances, be held liable under 42 U.S.C. § 1983 for constitutional violations resulting from failure to train its employees. Although this decision related to training for a local police department regarding the rendering of medical assistance, it created a frequently referenced foundation for the more serious claim of deliberate indifference to constitutional rights within case law.

In *Robinson v. City of St. Charles, Missouri*, 972 F. 2d 974 (8th Cir. 1992), the court held that, in order to prevail on a policy or training claim, the plaintiff must show that the government agency had notice that its training was inadequate and deliberately chose not to remedy the situation (Ross, 2000, p. 176). The *Robinson* decision should be considered by the federal government as a basis for possible future litigation.

In *Buttram v. United States*, No. 96-0324-S-BLW (D. Idaho 1999), the trial court found a federal agency and local fire department negligent and the proximate cause of the death of two firefighters in 1995. The court found that the fire department had failed to ensure the safety of the firefighters, provide adequate equipment, properly train them, and advise the federal agency of the limited training and experience of the firefighters. The federal agency and the fire department were both found responsible for their deaths during the wildfire. Nicholson, a law professor specializing in emergency response, argues that keeping responders as safe as possible eliminates an important potential source of agency liability (Nicholson, 2003, p. 323). The *Buttram* decision provides an interesting citation involving a federal agency.

In the case of *Atchinson v. District of Columbia*, 73 F. 3d 418 (D.C.C. 1996), the District of Columbia court of appeals held that even a single incident was sufficient to support the complaint of inadequate training and supervision (Ross, 2000, p. 176). The court further held that alleging an additional instance of misconduct would not necessarily improve the notice to the agency.

Board of County Commissioners of Bryan County, Oklahoma v. Brown, 520 U.S. 397 (1997) suggested liability for failure to train a single officer (Spector, 2001, p. 73). Even though the county was not held liable under 42 U.S.C. § 1983, the court found that “[c]laims such as the present, which do not involve an allegation that the municipal action itself violated federal law or directed or authorized the deprivation of federal rights, require application of rigorous culpability and causation standards in order to ensure that the municipality is not held liable solely for its employees’ actions.” The governmental entity’s liability would rely on the adequacy of the training program in relation to the tasks the employees must perform (Spector, 2001, p. 74).

The importance of training was also addressed in *Allen v. Muskogee, Oklahoma*, 119 F. 3d 837 (10th Cir. 1997), which involved use of force and law enforcement response to dangerous situations. In *Sanders-Burns v. City of Plano*, 594 F. 3d 366 (5th Cir. 2010), the court found that, for an alleged failure to train claim to succeed, the plaintiff must demonstrate that:

- (1) the agency’s training policy procedures were inadequate;
- (2) the agency was deliberately indifferent in adopting its training policy; and
- (3) the inadequate training policy directly caused the violation that was the basis for the 42 U.S.C. § 1983 action.

Even though the *Sanders-Burns* claim failed, the ruling continued to address the issue of training personnel and deliberate indifference by a department or agency.

B. DELIBERATE INDIFFERENCE

Beyond the accusation of failure to train, a finding of deliberate indifference may be more serious in that it can result in stronger consequences for a department or agency that has been provided notice of a training issue and chooses to ignore the need or requirement. “Deliberate indifference” has been defined as “the conscious or reckless disregard of the consequences of one's acts or omissions” (USLegal). In the early case of *Estelle v. Gamble*, 429 U.S. 97 (1976), the Supreme Court found that deliberate indifference can result in an agency’s liability under 42 U.S.C. § 1983. The court ruled that it was only such indifference that can offend “evolving standards of decency” in violation of the Eighth Amendment.

In the Supreme Court case of *Monnell v. Department of Social Services*, 436 U.S. 658 (1978), the court found that municipalities and other governmental bodies are persons within the meaning of 42 U.S.C. § 1963 for civil rights violations and liability of their personnel under certain circumstances. The *Monnell* decision was referenced in many of the subsequent court decisions regarding failure-to-train and deliberate-indifference claims against law enforcement agencies.

The deliberate indifference standard was expanded in *Bordanaro v. McLeod*, 871 F. 2d 1151 (1st Cir. 1989), when the court identified numerous training deficiencies and issues indicative of deliberate indifference. Even though *Bordanaro* involved significant use-of-force issues, it further established case law regarding failure to train and deliberate indifference. In *Doe v. Borough of Barrington*, 729 F. Supp. 376 (D.N.J. 1990), the court found that the absence of training was a deliberate and conscious choice by the agency. The court also found that agencies must abide by the Constitution regardless of what other agencies do or fail to do. The *Doe* decision may be relevant for a claim against a specific federal department or agency since being part of a larger noncompliant group would not provide legal justification or coverage to evade liability.

In *Zuchel v. City and County of Denver, Colorado*, 997 F.2d 730 (10th Cir. 1993), the court found the city was deliberately indifferent as a result of its inadequate training regarding the use of deadly force. In the ruling, the court referenced evidence from an outside source that should have placed the city on notice for this training inadequacy. The numerous documents referenced in the literature review could be viewed by future plaintiffs as repeated previous notices by outside sources to the federal law enforcement community of possible inadequate preparedness training according to NIMS and NRF.

According to Martin J. King (2005, p. 23), referencing the Supreme Court case *Board of County Commissioners of Bryan County, Oklahoma v. Brown*, 520 U.S. 397 (1997), “deliberate indifference is a standard of fault that requires a showing that government policy makers acted with conscious disregard for the obvious consequences of their actions.” King continues: “If a training program does not prevent constitutional violations and a pattern of injuries develops, officials charged with the responsibility of formulating policy for the agency may be put on notice that a new program is needed and a failure to address the problem may constitute deliberate indifference.”

To prevail on theory that an agency is liable under 42 U.S.C. § 1983 based on failure to train, the plaintiff must show that the failure to train rose to the level of deliberate indifference, according to *Huffman v. City of Prairie Village, Kansas*, 980 F. Supp. 1192 (D. Ks.1997). In *Johnson v. Cincinnati*, 39 F. Supp. 1013 (S.D. Ohio 1999), the court found that the city was deliberately indifferent in failing to adequately train the police. An agency may be found liable for the failure to train subordinate officers where such failures reflect a policy of deliberate indifference to the constitutional rights of citizens according to *Garcia v. County of Bucks, Pennsylvania*, 155 F. Supp. 2d 259 (E.D. Pa. 2001). In the case of *Estate of Owensby v. City of Cincinnati*, 385 F. Supp. 2d 626 (S.D. Ohio 2004), the court found that the failure to train individual police officers on the proper meaning and application of policies regarding medical care rose to the level of deliberate indifference.

A study by Darrell L. Ross (2000, p. 180) revealed that deliberate indifference regarding training can be difficult to prove in court with only one-third of the cases being successful, but the average award for successful claims was \$450,000 as of 2000. It is anticipated that the average award value has increased since 2000.

As stated by King (2005, p. 30), “Although deliberate indifference is most often found in cases that involve inaction in the face of a pattern of prior similar constitutional violations, a failure to act that results in a single unprecedented incident can support a finding of deliberate indifference where the constitutional violation was a highly predictable consequence of failure to train.”

C. SHORTAGE OF RESOURCES

Beyond receiving the appropriate preparedness training according to policies and procedures, it is critical to properly document that training for tracking and subsequent reviews and audits. As found by Charles Dahlinger (2001, p. 54), “In order to protect themselves against claims, some very basic procedures can be utilized to help minimize and defend departments and their officers. First and foremost, a good clear documentation of training is a must.” A large portion of the benefit of training could be lost when it is not properly documented to ensure adherence by an entire department or agency.

As documented in *Popow* and other court rulings, a limited budget for training does not alleviate an agency from training requirements and standards. In *McClelland v. Facticeau*, 610 F.2d 693 (10th Cir. 1979), the court found that budgetary constraints that limit training are not a valid defense. The budgetary-limitations-for-training argument was also encountered in *Brown v. Bryan County, Oklahoma*, 219 F.3d 450 (2000) with negative results for the agency where the court upheld the lower court ruling and jury finding that the training policy of the agency was so inadequate as to amount to deliberate indifference. Even though it may have been a budgetary reality, the lack of funding for training did not relieve a department or agency of liability.

D. POTENTIAL LIABILITY

Research for this subject identified other cases for which arguments and claims of deliberate indifference regarding training were unsuccessful, but the case law above provides a foundation of rulings that could be utilized against the federal law enforcement community regarding its preparedness training for future NIMS- and NRF-related mission assignments and response for incidents. Even though few of the cases listed above are directly on point for the federal government, they would likely be utilized in an attempt to establish new case law in the future for alleged constitutional and civil rights violations.

Strong leadership within the federal law enforcement community is crucial to enhance the level of preparedness within those departments and agencies and to reduce future legal liability. As stated by Nicholson (2003, p. 327), “When individual agencies within a unit of government refuse to fulfill their legal duties, whether in preparedness or in response, the responsibility for fixing the situation lies squarely on the shoulders of the unit of government’s leader.” As history has demonstrated in the past 20 years, the federal law enforcement community will be required to respond to significant man-made and natural incidents in the future that require the knowledge, skills, and abilities obtained from NIMS and NRF preparedness adoption and compliance.

The costs of preparedness training would likely be minor as compared to the possible financial and political consequences of a successful lawsuit against a federal department or agency. The benefits of preparedness adoption and compliance would likely be larger than the investment when a tort claim is lost, as documented in the research by Ross.

V. COSTS AND BENEFITS OF FEDERAL ADOPTION AND COMPLIANCE

The costs and benefits of preparedness adoption and acceptance for a department or agency can vary, but the primary areas for consideration are often financial and political due to the purview of Congress. Although important for all of the federal law enforcement community, the departments and agencies with DHS may have the most to gain by preparedness adoption and compliance in the eyes of Congress and the public. As found by Clovis (2006, p. 10), regarding DHS, Congress provides more oversight of DHS than it does the Department of Defense, which has a budget 10 times larger. As a result, the benefits for a department or agency, especially DHS, which adheres to Congressional mandates and expectations can be great, as can be the costs of failure. The fact that the federal law enforcement community has not adhered to the requirements and recommendations in the numerous documents and references in the literature review does not mean that Congress is fully aware of this or has modified its expectations of the federal government's preparedness during a major incident response.

However, Congress may possess a level of responsibility for the current status of preparedness adoption and compliance within the federal law enforcement community through inadequate prioritization, monitoring, and support. As stated by Amy K. Donahue and Robert V. Tuohy (2006, p. 10), politicians tend to respond to more immediately pressing social and political demands, deferring investment in emergency preparedness until a major incident reawakens public concerns. Unfortunately, high-profile incidents and the resulting media attention generate opportunities to make changes because public fear and complaints prompt politicians to support improvements (Donahue & Tuohy, 2006, p. 10). The challenge is to identify the lessons learned and to execute the changes prior to the loss of interest by the government, Congress, and public.

Preparedness adoption and compliance by the federal law enforcement community may depend on costs and benefits associated with the acceptance or

avoidance of the national preparedness requirements and recommendations. According to David L. Weimer and Adian R. Vining (1999, p. 341), the valuation of policy outcomes is based on the concept of willingness to pay:

Benefits are the sum of the maximum amounts that people would be willing to pay to gain outcomes that they view as desirable;

Costs are the sum of the maximum amounts that people would be willing to pay to avoid outcomes that they view as undesirable.

Thomas A. Birkland (2006, p. 30) has stated that policy makers must calculate the costs of learning from a major incident against the likelihood that an incident would occur again during their tenure. Birkland continues: if a major incident was not expected during the policymakers' tenure, the benefits that would accrue from the considerable efforts in learning and improving policy performance would not benefit them in the near term. Birkland's observations may be an influencing factor as to why so many department and agency leaders have failed to adhere to the preparedness requirements and recommendations, according to research and FEMA reporting.

The financial costs of preparedness acceptance for the department or agency involve the existing operating costs of operation for the organization, along with any additional costs necessary for adoption and compliance without another source of funding. The most tangible costs may be the basic salary of employees while they are completing designated preparedness training during business hours and any impact to their assigned duties. Since the salaries would be expended during daily operations, there would be limited or no anticipated additional cost to the department or agency.

The incorporation of the preparedness requirements and recommendations into the organizational culture would likely be minimal since they would be included in the standard operations of the organization in the development and design of policies, plans, procedures, and budgets.

The political costs of the failure of preparedness adoption and compliance have not been significant for the federal departments or agencies, as documented in many after-action reports. However, the political costs may greatly increase during and after a

major incident should the ramifications of the preparedness failures become evident to Congress and public. The political costs of Hurricane Katrina resulted in the removal of a FEMA director and a persistent impression that the federal government was inadequately prepared to respond to the natural disaster. Subsequent responses— such as to a significant oil leak in the Gulf of Mexico and an earthquake in Haiti—have reinforced this impression.

The benefits of acceptance would be adherence to national requirements and recommendations, resulting in an enhanced preparedness level for daily operations utilizing beneficial ICS concepts and the future incident response and support. There is also a likely benefit to leadership of not being identified in future FEMA, GAO, or Office of Inspector General reports for noncompliant organizations. There is an anticipated benefit to not being included in the future FEMA federal preparedness reports, especially after a major incident with an inadequate federal response.

A. NIMS COMPLIANCE TRAINING

1. FEMA Training Guidance

According to the National Incident Management System (NIMS): Five-Year NIMS Training Plan (USDHS, FEMA, 2008b, p. iii), “A critical tool in promoting the nationwide implementation of NIMS is a well-developed training program that facilitates NIMS training throughout the nation.” The NIMS training plan continues:

The National Incident Management System (NIMS) represents a core set of doctrine, concepts, principles, terminology, and organizational processes that enables effective, efficient, and collaborative incident management across all emergency management and incident response organizations and disciplines. The President of the United States of America has directed Federal agencies to adopt NIMS and encouraged adoption of NIMS by all stakeholders—Federal, State, territorial, tribal, sub-state regional, and local governments, private sector organizations, critical infrastructure owners and operators, and nongovernmental organizations involved in emergency management and/or incident response. (USDHS, FEMA, 2008b, p. 1)

The intended audience for NIMS training includes federal, state, local, tribal, private sector, nongovernmental agencies, and other organizations that may plan for, prepare for, or respond to an incident. The core curriculum NIMS training courses are identified as awareness, advanced, and practicum, based on the expected level of learning of the student (USDHS, FEMA, 2008b, p.16).

The basic preparedness training required to meet the NIMS guidelines for the federal law enforcement community is identified in Table 2. The level of preparedness training depends on the duties of the personnel and the policies of the department or agency, but the courses in Table 2 provide the basic training to establish an operational understanding of NIMS, including NRF, for preparedness adoption and compliance according to FEMA (USDHS, FEMA, 2009e). Although the courses can be completed in a shorter period of time, the FEMA-estimated completion times have been utilized in order to evaluate the costs.

Table 2. Basic NIMS/NRF Training Curriculum (USDHS, FEMA, n.d.)

COURSE	TRAINING	HOURS	FORM	PREREQUISITE	RECOMMENDATION
IS-100.LEa	ICS-100	3	Online	None	Agency Responders
IS-200.a	ICS-200	3	Online	IS-100	Agency Responders
IS-700.a	NIMS	3	Online	None	All Employees
IS-800.b	NRF	3	Online	None	All Employees
G-300	ICS-300	24	Classroom	ICS-100\200	Supervisory Responders
G-400	ICS-400	16	Classroom	ICS-300	Supervisory Responders

According to FEMA, the first four preparedness courses in Table 2 were to be completed by FY 2006 (USDHS, FEMA, 2009e).

FEMA provides additional NIMS online preparedness training courses to enhance department and agency preparedness. Although not required to meet basic preparedness training according to FEMA guidance, the courses in Table 3 may be of benefit to department and agency personnel to better plan, prepare, and respond to incidents, events, and situations.

Table 3. Advanced NIMS Training Curriculum

COURSE	TRAINING	HOURS	FORM	PREREQUISITE	RECOMMENDATION
IS-701.a	MACC	2.0	Online	N/A	Designated Personnel
IS-702	PIO	3.0	Online	N/A	Designated Personnel
IS-703.a	Resource Man.	3.5	Online	N/A	Designated Personnel
IS-704.a	Communications	3.0	Online	IS-700	Designated Personnel
IS-706	Mutual Aid	2.5	Online	IS-700	Designated Personnel
IS-775	EOC Operations	4.5	Online	N/A	Designated Personnel

In addition to the agency benefits for the completion of this important NIMS preparedness training provided by FEMA, employees have the opportunity to receive college credit for completed independent study courses. FEMA established a relationship with a Maryland community college to apply the credits toward an associate's degree, certificate, or letter of recognition in emergency management (EmergencyManagementStudy.com, 2010). The community college identified the rewards of the training as college credits, job advancement, performance appraisals, and personal satisfaction.

2. Federal Salary Costs

To evaluate the training costs for a department or agency utilizing the FEMA online training Web site and classroom-delivered training, the hourly salary cost for each course may provide valuable information. An analysis of the hourly cost of a step-1 employee, without including the cost of benefits, in the table below (United States Office of Personnel Management, 2010) demonstrates the estimated salary cost of an employee completing the online and classroom training identified in the table above. Even though the costs may be negligible and expended during daily operations, the costs are useful for consideration to better understand the impact on organizational resources.

Table 4. Salary Costs by Hour for NIMS Training

GRADE	HOURLY RATE	3 HOURS	16 HOURS	24 HOURS
GS-5	\$13.14	\$39.42	\$270.24	\$315.36
GS-6	\$14.65	\$87.90	\$234.40	\$351.60
GS-7	\$16.28	\$48.84	\$260.48	\$390.72
GS-8	\$18.03	\$54.09	\$288.48	\$432.72
GS-9	\$19.92	\$59.76	\$318.72	\$478.32
GS-10	\$21.93	\$65.79	\$350.88	\$526.32
GS-11	\$24.10	\$72.30	\$385.60	\$578.40
GS-12	\$28.88	\$86.64	\$462.08	\$693.12
GS-13	\$34.34	\$103.02	\$549.44	\$824.16
GS-14	\$40.58	\$121.74	\$649.28	\$973.92
GS-15	\$47.47	\$142.41	\$759.52	\$1139.28

As stated by the White House in The Federal Response to Hurricane Katrina—Lessons Learned (2006, p. 72), “Training is not as costly as the mistakes made in a crisis.” The operational and political benefits of this training would likely outweigh the existing salary costs to a department or agency in the possible political-consequence world to avoid being identified in another White House after-action report.

B. POLICY, PLAN AND PROCEDURE ADHERENCE

The costs of incorporating preparedness concepts and requirements into department and agency policies, plans, and procedures may involve no additional costs to develop or modify the documents prior to scheduled development or review. However, departments and agencies may find it necessary to obtain additional support from supplemental staff or contractors to expedite the process to meet the preparedness requirements and recommendations through policies, plans, and procedures. The costs of the additional support, which may be short-term, would vary depending on the level

required to meet the goals. Due to the variance in existing federal contracts and the amount of assistance required, it is difficult to estimate the actual costs for a department or agency.

In his analysis of the political costs of failure during Hurricanes Katrina and Rita, Waugh (2006, p. 22) states:

There are political costs and, for local officials, potential legal costs that might be exacted if they fail to prepare for and respond adequately to a disaster. A means for addressing the risk of legal liability and mitigating potential political costs is adherence to accepted national standards.

The benefits of incorporating preparedness into department and agency policies, plans, and procedures can be vast, ranging from basic adherence to empowering personnel to be prepared for future assignments and responsibilities with reduced legal liability exposure. The political benefits of policy, plan, and procedure adherence could be significant for an organization that is not the subject of interest by Congress during or after incident hearings and commissions.

C. COMPLIANCE MONITORING

The costs associated with the monitoring of preparedness adoption and compliance depend on the structure of the department or agency. If the organization has an existing policy or preparedness unit, the monitoring and reporting could be incorporated into it along with current GPRA tracking requirements; additional resources may be required to execute these duties. If the department or agency does not have this capacity, a designated unit or office may need to be developed, equipped, and trained to provide this service.

The benefits of this compliance monitoring, via a designated unit or office, would be the ability to document achievements and compliance for planning and for future audits. Through compliance monitoring, areas for enhancement can be identified to improve the program. With the possible legal and political liability for an organization

that fails to train its employees, compliance monitoring plays an important role in reducing exposure to unpleasant and time-consuming questions, hearings, and court cases.

D. EXERCISES

The costs of an exercise often depend on the capabilities of the department or agency and the size and complexity of the exercise. A local table-top exercise will likely require far less in resources than a full-scale or national-level exercise. No matter the scale, the exercising of NIMS preparedness is a part of the FEMA guidance to federal, state, local, and tribal agencies via their yearly implementation guidance. As stated by the White House in *The Federal Response to Hurricane Katrina—Lessons Learned* (2006, p. 72), “At all levels of government, we must build leadership corps that is fully educated, trained and exercised in our plans and doctrine.”

The actual costs of exercises for a federal department or agency may be difficult to estimate without the adoption of preparedness requirements to determine their priorities, capabilities, and responsibilities. On adherence to preparedness requirements and the identification of trained employees, an exercise schedule can be developed to meet department, agency, and national guidelines and goals. According to FEMA exercise guidance, the National Exercise Program (NEP) provides an organized approach to set priorities for exercises, reflects those priorities in a multi-year schedule of exercises that serves the strategic and policy goals of the United States government, and addresses findings from those exercises through a disciplined interagency process (USDHS, FEMA, 2009f). The NEP establishes the Homeland Security Exercise and Evaluation Program (HSEEP) as the exercise methodology and tools to support the NEP.

FEMA’s Lessons Learned Information Sharing Web site (USDHS, FEMA, 2010c) is a source of information to obtain best practices and lessons learned from incident and exercise after-action reports. The reference Web site can assist a department or agency in the development of an exercise to evaluate the possible costs and benefits, to include reducing costs and increasing benefits by learning from other organizations. The FEMA Web site contains a vast library of homeland security plans, procedures,

templates, and tools from jurisdictions across the nation, which provides its members with a valuable resource when they are developing or revising plans and procedures for their organizations.

The benefits of an exercise depend on the quality of the design in conjunction with the priority placed on it by the department or agency. The return or benefit of an exercise often corresponds with the investment of the department or agency. An important result of exercises is to expose deficiencies so that they can be examined and corrected, but fear of retribution or penalties impede honest reporting (Donahue & Tuohy, 2006, p. 16). The ability of a department or agency to exercise its capabilities prior to an incident is crucial to better preparing the organization for a safe and successful response. Just as it is unlikely that any teams in professional sports enter the field without practicing their plays, the federal law enforcement community should be no different, for the stakes are much higher.

When exercises, especially at the national level, are designed and developed, they must be relevant to generate interest by the players and to provide a benefit at an acceptable cost for the participating organizations. Unfortunately, exercise procedures are typically simplified, compared to how their actual unfolding in a real event, in order to meet time and resource limitations (Donahue & Tuohy, 2006, p. 15). In the past, some national exercises have not always provided benefit for the costs required to participate in them. According to Spencer Hsu (2010, p. A1) in his article “National disaster exercises, called too costly and scripted, may be scaled back,” the current administration is evaluating the costs of the current national-level exercises for the benefits that they produce. The drills have grown into unrealistic, costly, and over-scripted productions, DHS Secretary Napolitano has said, an “elaborate game” rather than an opportunity for officials to work through problems.

Although the costs and benefits of exercises will likely be disputed from various positions, the importance of exercising a department or agency’s preparedness level will always be important to determine its readiness for a future incident. Time has demonstrated the perils of responding without a plan or appropriate skill set.

E. SAMPLE AGENCY TRAINING COSTS

The most immediate and tangible costs associated with preparedness adoption and compliance are identified through the training costs for the department or agency. The estimated training cost of an agency of 5,000 employees, including 2,500 law enforcement officers is set forth in Table 5. The average salary cost of a GS-11 is used for the general employee and agency responder estimate; GS-14 is used for supervisory responders.

Table 5. Average Agency Salary Costs for Training

COURSE	HOURS	SALARY	EMPLOYEES	TOTAL COSTS	RECOMMENDATION
IS-100.LEa	3	\$24.10	2,500	\$180,750	Agency Responders
IS-200.a	3	\$24.10	2,500	\$180,750	Agency Responders
IS-700.a	3	\$24.10	5,000	\$361,500	All Employees
IS-800.b	3	\$24.10	5,000	\$361,500	All Employees
G-300	24	\$40.58	250	\$243,480	Supervisory Responders
G-400	16	\$40.58	250	\$162,320	Supervisory Responders

The total cost for the average agency listed above would be less than \$1,500,000 in existing basic salary costs to achieve NIMS training compliance. Since these are not necessarily additional costs due to existing budgets for the salary of employees, the benefits may be greater on any subsequent benefit of the training compliance, including the funding available from the federal financial incentive concept identified in Chapter VI.

Salary costs are the easiest to estimate due to the known number of employees, courses, and time requirements. The cost of incorporating preparedness adoption and compliance in the area of policy development, compliance monitoring, and exercises is more difficult to estimate due to the differing structure and capabilities of the departments and agencies. Departments and agencies with a more robust infrastructure would be able to better adhere to the requirements as compared to others with limited capabilities. The good news is that many preparedness adoption and compliance costs are often one-time costs for long-term benefits.

VI. FEDERAL FINANCIAL INCENTIVE CONCEPT

The importance of preparedness adoption and compliance for the federal law enforcement community was identified in Chapter I. The impact of federal grant access for state, local, and tribal governments was studied in Chapter III. The possible costs of the failure to train and deliberate indifference and the benefits of legally defensible training were addressed in Chapter IV. The costs and benefits for a federal department or agency to adhere to national preparedness requirements and recommendations were discussed in Chapter V. The costs and benefits of preparedness adoption and compliance can be evaluated by a department or agency through these chapters, but adherence may still be elusive.

If the previous national preparedness strategies, plans, and guidance have not provided sufficient motivation for NIMS adoption and compliance, a novel federal financial incentive concept may encourage an increased culture of preparedness within the federal law enforcement community to achieve a preparedness level consistent with its state, local, and tribal partners. Through the framework below, the novel federal financial incentive concept would be developed and implemented to address the preparedness deficiency.

A. FRAMEWORK

The framework for this federal financial incentive concept consists of the preparedness goals consistent with NIMS and FEMA guidance to be achieved by each department or agency. The goals are met by reaching the concept milestones. The initial investment to reach the first milestone is funded by the department or agency with funding from its existing general budget. Once milestone levels are achieved during a designated time period, such as a fiscal-year quarter, a portion of the concept funds is immediately distributed directly to the successful departments or agencies for their use to further preparedness achievement. The concept funding could not be used for purposes other than further improving and enhancing the department or agency's preparedness adoption and compliance to attain the next milestone according to an approved

department or agency concept preparedness plan. The concept is designed to continue enabling the departments or agencies to utilize the dedicated funding from each achievement milestone to the lessons-learned level and preparedness compliance.

1. Goals

The goals are consistent with NIMS guidance provided to federal, state, local, and tribal agencies by FEMA.

- a. Adopt NIMS (ICS) as the agency's all-hazards incident management system through clear direction and guidance to agency personnel;
- b. Adopt NRF as the agency's response framework, in conjunction with NIMS, through clear direction and guidance to agency personnel;
- c. Identify responsible agency component(s) to oversee, monitor, document, and report confirmed agency preparedness achievements;
- d. Develop and modify policies, plans, procedures, and guidance for the implementation of NIMS and NRF;
- e. Complete and document NIMS and NRF preparedness training as designated by FEMA or another qualified organization, to include IS-100-LEa, IS-200a, IS-700a, and IS 800b (or their equivalents);
- f. Report completed NIMS and NRF preparedness training and other relevant achievements to the FEMA NIC NIMSCAST (and/or designated organization or process);
- g. Develop inter-agency agreements, as required, with federal, state, local, and tribal agencies and organizations;
- h. Develop inter-agency agreements, as required, with nongovernment organizations and private sector entities;
- i. Develop standard operating procedures, as required, with other federal, state, local, and tribal agencies and organizations;
- j. Develop standard operating procedures, as required, with nongovernment organizations and private sector entities;

- k. Conduct exercises to evaluate agency's preparedness and ability to coordinate and collaborate with other agencies;
- l. Develop after-action reports and lessons learned after incidents, deployments and exercise; and
- m. Identify areas for improvement and develop plans of action to address deficiencies.

2. Milestones

The milestones are a combination of the goals for attainment to achieve levels of preparedness and reward.

a. Preparedness Adoption

The establishment and implementation of a preparedness plan for the adoption of the concept goals listed above through a formal department or agency mandate would document the achievement of this milestone through agency directive and leadership.

b. Identification of Responsible Official

The formal identification and designation of the official(s) within the department or agency component responsible for preparedness implementation, execution, oversight, documentation and reporting to ensure adoption and compliance would achieve this milestone.

c. Training Completion

The coordination, documentation and reporting of the required preparedness training for designated personnel to FEMA NIC NIMSCAST and/or designated superceding organization or process.

d. Policies, Plans, and Procedures

The development of new department or agency policies, plans, and procedures that adhere to and support preparedness requirements and recommendations to include NIS and NRF. The consideration of preparedness requirements and recommendations in the review or modification of existing policies, plans, and procedures.

e. Exercises and Lessons Learned

After-action reports are completed after exercises and incident responses to analyze deficiencies and document lessons learned. The lessons learned are utilized to review, improve, and enhance the department or agency preparedness programs.

3. Financial Incentives

The financial incentives are divided into a point system to provide an understandable common process for the award of incentive funding to the departments and agencies. The use of a point structure establishes a common framework to reward achieving applicants to support fairness and transparency. The point system also permits departments and agencies to be rewarded for multiple milestones during an evaluation period for a larger percentage of the available funding.

When a department or agency achieves the milestone through documentation and verification, a point value is given to the achievement. At the end of the quarter, the designated amount of funding is divided among the departments and agencies according to their point value. If five departments or agencies each earned two points, each would receive 20 percent of the quarterly funding.

Table 6. Concept Milestones

Milestones	Points
Preparedness Adoption	2
Responsible Official	1
Basic Training Completion (IS-700 and IS-800)	3
Responder Training Completion (IS-100 and IS-200)	3
Advanced Training (ICS-300 and ICS-400)	4
Policies, Plans, and Procedures	5
Exercises and Lessons Learned	3

The departments and agencies would be responsible for submitting the required documentation with evidence of milestone completion to be eligible to receive their designated preparedness funding. The format and guidance for the submissions would be developed and distributed by the managing organization to ensure full compliance, to include auditing as appropriate.

The federal financial incentive concept could be funded at any level determined as appropriate by Congress. As an example, the concept could be funded with \$100,000,000 during this first year as a pilot program. This example amount is a fraction of the FY 2010 federal preparedness funding available to state, local, and tribal agencies. For its first quarter below, four departments or agencies have accumulated the following points to gain access to the \$25,000,000 available for distribution.

Table 7. Sample Funding Distribution for Concept

AGENCY	POINTS	PERCENTAGE	FUNDING
A	2	.12	\$3,000,000
B	4	.24	\$6,000,000
C	5	.29	\$7,250,000
D	6	.35	\$8,750,000

Each department or agency would receive the funding identified above to enhance its preparedness program(s) to better adhere to national requirements and recommendations. The funding could be utilized to achieve additional milestones for additional preparedness funding within the designated parameters of the financial incentive concept. Using the example above, the rewards or benefits for achieving concept milestones greatly outweigh the initial costs by the department or agency, especially with the sample agency and its salary costs required for the NIMS training compliance.

The development of the concept would require additional considerations on authorization, such as placing the federal law enforcement departments and agencies into groups according to their size or history of response to significant national incidents. The use of such a grouping would provide a more level playing field for the actions required to achieve the milestones. However, having all departments and agencies competing on the same level might motivate the larger ones to achieve preparedness adoption and compliance at a faster rate.

B. FUNDING

Congress could fund this new concept as a budget line in the same manner as HSGP, with restrictions for access by the federal departments and agencies for designated preparedness adoption and compliance outside of existing departments and agency budgets. Funding, including the appropriate operating costs, would be provided to the designated organization for implementation and oversight. This funding concept would

be new for the federal law enforcement community outside of its annual budgets with the intent to better support the anticipated Stafford Act response activities conducted by the federal departments and agencies to assist state, local, and tribal agencies during significant incidents.

As stated above, the first year of this concept could be funded at a hypothetical level of \$100,000,000 for the federal law enforcement community. This level of funding may appear significant, but it is less than four percent of the FY 2010 federal preparedness grant funding. To conserve funding in difficult fiscal times, this funding could be part of the current HSGP and directed to the federal partners for enhanced partnership with the state, local, and tribal governments during FEMA mission assignments. The funding would be divided into four quarters for distribution to further encourage timely adoption and compliance during the fiscal year, rather than for a fiscal year. If funding is awarded quarterly, the incentive to achieve milestones might be greater, especially during a fiscal year where a department or agency would benefit from additional resources.

This concept could be funded for a limited time period, as required to meet the milestone achievements. It is anticipated that the concept would be funded for a period of two to three years to afford the opportunity for the federal law enforcement community to achieve preparedness adoption and compliance. The concept would not be extended beyond this short period so as to ensure that it does not become an anticipated outside funding source, rather than an innovative incentive concept for change within the federal law enforcement community.

This novel federal financial incentive concept could provide Congress with a pilot program to assess alternative funding methods for the federal government to encourage specific productivity and program results. This unique funding concept could provide a process to meet designated goals with expedited financial incentives. If this concept were successful, it might provide an alternate funding framework for other projects and programs within the federal government.

C. OVERSIGHT

The concept outlined above could be managed by an organization within the legislative or executive branch, such as the FEMA Grant Program Directorate (GPD), in conjunction with NIMSCAST coordination for preparedness adoption and compliance tracking. This concept could also be managed by a homeland security–related nonprofit association or educational organization as an independent entity, such as the Naval Postgraduate School Center for Homeland Defense and Security. However, a nongovernment entity might require additional resources and authorities to execute the mission. The intent of the concept is to ensure that the administrative costs are as low as possible in order to direct the funding to the departments and agencies.

FEMA GPD currently functions as the “one-stop-shop” for FEMA grant management, according to the FEMA Grant Programs Directorate Strategic Plan—Fiscal Years 2009-2011 (USDHA, FEMA, 2008a, p. 2). FEMA GPD financially managed over \$10,000,000,000 for 50 grant programs in FY 2007. FEMA GPD also programmatically managed over 7,000 individual grants, totaling over \$4,000,000,000 in preparedness funds. Due to its experience, FEMA GPD would have the knowledge and infrastructure to either execute this concept or provide support to the managing organization.

The managing organization would be responsible for receiving, reviewing, and approving the preparedness plans and milestone achievement documentation from the departments and agencies to ensure compliance with the program. The managing organization would also ensure that the appropriate preparedness adoption, compliance, and adherence results were documented in NIMSCAST. The managing organization would be responsible for reviewing the documentation and certifying that milestones have been achieved to be eligible to receive the appropriate funding. The managing organization would have the authority to audit the departments and agencies to ensure that the submitted documentation was correct and accurate. At the end of each quarter, the funds would be distributed according to their points.

VII. CONCLUSION

A. SUMMARY

The importance of preparedness adoption and compliance for the federal law enforcement community did not begin with the 9/11 terrorist attacks or the Hurricane Katrina response, but both incidents function as important drivers for change and identified lessons learned for federal, state, local, and tribal governments. As with the aftermath of many incidents and their subsequent after-action reports, the recurring question remains: Will the lessons be learned? As stated by Birkland (2006, p. 189):

Time will tell whether the “lessons” of Katrina being bandied about in the popular and technical media and in the federal, state, and local governments are actually learned and translated into policy, or are simply observed and filed away until the next disaster causes policymakers and reporters to rediscover these original “lessons.”

Even though state, local, and tribal governments are often the first responders to a significant incident or event, the federal government is not relieved from preparedness adoption and compliance requirements and responsibilities. A review of disaster declarations over the past 40 years demonstrates that the federal government will be expected to respond to a growing number of both domestic and international incidents. With the increase of federal involvement in incident response and support, federalism within homeland security continues to evolve. As stated by Clovis (2006, p. 17), regarding “collaborative federalism for homeland security”:

Homeland security is a national issue requiring national solutions. Therefore, the role of Congress and its executive agent, DHS, is that of facilitation and leadership, providing guidelines, milestones, and enough funding to make a difference.

As Clovis stresses, the national facilitation and leadership that provides guidelines, milestones, and funding should not be limited to state, local, and tribal governments for national solutions to homeland security. The federal government is an important partner beyond emergency and disaster funding. Only through collaboration at

all levels of government will the country achieve the best possible level of preparedness to avoid inefficiencies and unnecessary risk (2006, p. 18).

The federal law enforcement community needs to learn from the experiences of the state, local, and tribal agencies to develop its preparedness plans to ensure successful integration and interaction. For the nation to improve its preparedness capabilities, all levels of government must learn from the experiences and accomplishments of other organizations. It can be difficult for agencies to perceive the experience of others as relevant to their own responsibilities and operations, and it can be hard to prioritize these lessons over the daily problems that an agency confronts in its own jurisdiction (Donahue & Tuohy, 2006, p. 11).

The challenge for department or agency leadership is to understand and appreciate the costs and benefits of preparedness adoption and compliance, including the reduction in possible legal liability for the organization and its employees. Beyond the logic of being prepared and ready, leaders should consider the possible legal ramifications of their policy decisions. Nicholson (2003, p. 326) found that if planning and preparedness steps are required by law, failure to fulfill the statutory mandate may be the basis for liability.

As stated by Donahue & Tuohy (2006, p. 21), “If lessons learned become a priority for leaders, then they have a better chance of becoming a priority for the organizations. Lessons learned must be vertical with federal agencies that commit to identifying and learning the lessons that are relevant to them.”

The usefulness and applicability of NIMS and ICS will likely be discussed and debated by responders, policy makers, and academics for years to come. NIMS and NRF will likely evolve over the years with the lessons learned from small and large incidents. Nevertheless, until our national preparedness strategies, policies, and plans are modified or enhanced for the challenges of the future, NIMS and NRF are the current strategies requiring adoption and compliance for our national preparedness—including the federal law enforcement community.

Waugh (2006, p. 23) addressed incentives and political costs associated with preparedness:

If lessons learned are not drawn from the Katrina and Rita experiences, corrections will not be made. If officials are not given incentives to repair the national emergency management system, little will be done. For the officials who failed to address the hazards and/or failed to respond adequately, there may be serious political costs. The hurricanes provided a window of opportunity, and that window will begin to close as the memories of the disasters fade.

As stated by Michael McGuire (2009, p. 72) when addressing the need for professionalism in emergency management: “The increasing size and scope of disasters and emergencies suggest that no longer can a community rely on untrained nonprofessionals to prepare for, mitigate against, respond to, and recover from disasters.” This need or requirement for trained emergency management professionals includes all partners at the federal, state, local, and tribal levels. All incidents may begin and end locally, but the responses may require broader resources from various levels of government to be successful and truly serve the public.

Preparedness is encouraged or mandated by the federal government as an important segment of homeland security; it needs, therefore, to adhere to its own requirements and recommendations as part of the national strategy. The implementation of a new federal financial incentive concept similar to HSGP and other grant programs should result in enhanced preparedness adoption and compliance consistent with the state, local, and tribal governments.

B. RECOMMENDATION

The release of the DHS memorandum “NIMS Implementation for Federal Department and Agencies” (USDHS, 2010a) in May of 2010 and the “FY 2010 NIMS Implementation Objectives and Metrics for Federal Departments and Agencies” (USDHS, FEMA, 2010) document was another important step in the right direction to encourage preparedness adoption and compliance by the federal law enforcement community. However, the FY 2010 memorandum was largely a restatement of the FY 2004 memorandum to federal departments and agencies for NIMS adoption and compliance. Unfortunately, stating again that federal departments and agencies *should* implement all relevant actions, answer the metrics, and submit a final self-assessment by

September 30, 2010, may not provide more encouragement than in the past without additional incentives and resources. Since a large-scale emergency response to support state, local, and tribal governments during a significant incident is not the primary responsibility of the federal law enforcement community, this new funding concept is important to encourage and enable the departments and agencies.

Once the federal law enforcement community enhances its level of preparedness adoption and compliance, further research could be conducted to evaluate the actual costs and benefits of the achievement. Future study could focus on the effectiveness and efficiency of NIMS and NRF during significant incident responses with prepared and trained partners on the federal, state, local, and tribal levels. Future research could also evaluate the costs and benefits of innovative financial incentive concepts in encouraging and enabling change within federal departments and agencies outside of their current budget process.

Ignoring the numerous national directives, plans, policies, studies, and after-action reports regarding preparedness adoption and compliance has not been a shrewd or effective strategy for our nation. As Donald F. Kettl (2006, p. 274) stated when addressing preparedness and our failure to learn, “If the nation does not learn the lessons that both Katrina and September 11 teach, we will suffer the same consequences, over and over. In that case, the worst is yet to come.”

It is recommended that this new federal financial incentive concept be authorized, developed, implemented, and funded by Congress with the support of the executive branch. With the importance of its role within homeland security, the federal law enforcement community can no longer afford to ignore preparedness adoption and compliance for the inevitable future responses to man-made or natural disasters. To avoid a growing list of after-action reports, studies, hearings, and possible legal action that identifies failures and the importance of preparedness, this novel concept should be considered and adopted for the benefit of the nation and its citizens.

When the old sticks do not work, it is time for a new innovative carrot to resolve this homeland security challenge.

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